

IIHS Working Paper

Land Acquisition, Rehabilitation and Resettlement: Law and Politics¹

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Abstract: This working paper explores key issues in the new Land Acquisition Rehabilitation and Resettlement (LARR) Bill's attempt at 'balance' within the larger political context of land acquisition in India. In particular, it looks at Eminent Domain and 'public purpose,' rehabilitation and resettlement, compensation, safeguards for 'Project Affected Persons' (PAPs), processes (including the urgency clause), linkages with environment, applicability of the proposed enactment as well as critical areas where the enactment has no applicability. In doing so, the paper also asks larger legal and political questions regarding land acquisition in the backdrop of constitutional debates pertaining to the Bill's implications for federalism and within a detailed analysis of the most recent pronouncements of the Supreme Court. On 'public purpose,' the paper infers that even if the new Bill renders the concept less vague, it will still not stop the Judiciary from looking into questions of abuse in actual land acquisition or use of the land. What the LARR Bill could however achieve is allow a clearer legal framework within which the Judiciary could look into these questions in general, and on 'public purpose' in particular. The paper also looks at potential scenarios, and in particular, possible intended (or unintended) consequences of the enactment for future urbanisation patterns in India.

¹ Reflecting events and opinion as of January 31 2012, on a discussion which is dynamic and evolving every day

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Land Acquisition, Rehabilitation and Resettlement: Law and Politics

Land Acquisition stands at the political faultline of a changing India, undergoing significant transitions: political, economic, social, environmental, spatial. There is keen contestation along a variety of fronts, actors, structures and visions, and with deepening democracy and a savvy 24/7 media, the salience and political articulation of such contestation has become more visible. These debates are part of a greater emerging story that engages with processes and governance deficits in the country.

The latest draft of the Land Acquisition Rehabilitation and Resettlement Bill, 2011 (LARR Bill) is a formal legal response to such articulations. Whether the law follows the politics or plays harbinger is a matter of debate. However, the task of reading specific issues within LARR, including nitpicking at clauses to find all known and unknown devils, becomes more meaningful if such legalese were to be understood within the complex socio-politics of land itself. This means the LARR Bill has to be read in the context of political contestation, the spate of recent decisions by the Supreme Court and the widely felt need for 'balance' among diversity of voices. The LARR Bill aims at no less than altering the regulatory landscape and in doing so, may also indirectly unleash a range of other regulatory forces. As an unintended consequence, this enactment could unwittingly decide future spatial patterns of urbanisation in India. This task of looking for issues under the political sun calls for more detailed exploration.

Background

History lends perspective, even as, and perhaps because, it repeats itself. Land Acquisition Law, whether in 2011 or in 1894, are but links in the long chain of institutional arrangements and conveniences, to address the specific issues of the day. Some of these issues have not gone away in a century and a half.

Colonial period: In fact, the legal trail goes back further than 1894 –notably, to the Bengal Regulation I of 1824, the Act I of 1850, the Act XXII of 1863, the Act X of 1870, the Bombay Act No. XXVIII of 1839, the Bombay Act No. XVII of 1850, the Madras Act No. XX of 1852 Madras Act No. 1 of 1854 X of 1861, the Act VI of 1857 -all enacted by the colonial administration initially in the then Presidency towns and later spreading across the country, to facilitate the easy acquisition of land and other immovable properties for roads, canals and other 'public purposes' with compensation to be determined by specifically appointed arbitrators.ⁱ These enactments enabled building the bulwark of the colonial administration after the Crown re-established control after the events of 1857. By then, strategic interests such as cantonment areas, garrisons, telegraph, railways and in turn, their feeder links had also become a part of the colonial administration's imagination.

Little surprise then, that none of these legislations had provided for an opportunity to object to the acquisition of land itself, while nevertheless allowing the opportunity to raise issues regarding compensation. The debate on compensation has never been settled, 'market value' being as amorphous as 'public purpose' in the 19th century as well. Even in the late 19th century, allegations of 'inadequacy, corruption and misconduct' were rife.ⁱⁱ The Land Acquisition Act of 1894, meant to bring some uniformity to the acquisition decisions of the Empire, now that it had consolidated its hold since 1857. It meant to *'amend the law for the acquisition of land for public purposes and for companies and to determine the amount of compensation to be made on account of such*

acquisition'.ⁱⁱⁱ This meant a single law to control a single administration, one that also helped derive 'legitimacy' for the administrative foundations of Empire. In a predominantly agricultural landscape, such a law also provided a basis to generate revenue from the productive uses of land.

It was only in 1923, after the Non-Cooperation movement, and after Indian leaders entered Local Administration through elections, that the amendment of Section 5A to the 1894 Act was introduced: one that allowed the possibility of raising objections, albeit with a warning on its limitations. The Statement of Objects and Reasons contained in Bill No. 29 of 1923 stated that the Act did not provide that persons having an interest in the specific land had a right to object to such acquisition; the Government too was not duty bound to enquire into and consider such objection. Instead the amendment was supposed to be a check on the local government, by prohibiting the declaration of any such acquisition for public purposes, until objections were 'considered' by the local government. In other words, the idea of objection was introduced while leaving open the possibilities for interpretation of such objection, and more significantly, in a manner that did not obstruct the land acquisition itself.

Early Independent India: Even after independence and the adoption of the Indian Constitution, the 1894 Act continued to be in force, albeit with periodic amendments.^{iv} The new Nation State built new cities Jamshedpur, Chandigarh, Bhillai and so on as part of the Nehruvian vision of modernity. The State also expanded its economic reach by focusing on heavy industries and linked infrastructure, for which available land was a pre-requisite. 'Eminent Domain' theory or the justification of State's acquisition of land, even if involuntary, for 'public purpose' and for 'compensation', continued, this time, as an essential attribute of sovereignty itself, control over territory being a marker of sovereignty in International Law.^v Combined with the needs of modernity, the rhetoric of the 'commanding heights of the State' or of 'dams as the 'temples of modern India' also finds prominence in land acquisition.

In light of the State's predominant role in national development within this discourse of nation building, the early Judiciary's relative deference to the Executive's determination of 'public purposes', is better understood.^{vi} At the same time, the new Constitutional frame brought in elements of federalism, universal adult suffrage (not just for the propertied) and basic fundamental rights. Land Acquisition, in the new Constitutional scheme, was rendered a Concurrent list subject, with power to both Centre and States to make laws on 'requisition and acquisition of immovable property'.^{vii} The right to property too was initially considered a fundamental right. It was only inevitable then for an institutional clash to emerge between the specific ability of a colonial land acquisition law and the broader demands of a polity which also included a newly independent Nation State.

The State too was beginning to show first signs of internal differentiation, through an emergent independent Judiciary. Article 141 of the Constitution aided this separation, by explicitly stating that the law laid down by the Supreme Court was the binding law of the land. In fact the battle lines between the Executive and the Judiciary were initially drawn over the right to property (in Kameshwar Singh's case) in 1951 itself. After much constitutional debate, it finally required an innovative heuristic of 'the basic structure' doctrine (i.e. a broad compendium of elements considered essential to a functional democracy, which Parliament, could not abridge) to resolve matters.^{viii} Subsequently, after the end of the Emergency and the installation of a new Government

at the centre, the right to property was changed from a fundamental right to a legal one (through the 44th Amendment in 1978) and no one could anymore challenge an acquisition of private property on grounds of violation of Fundamental Rights.^{ix}

Amidst this constitutional turmoil, the Land Acquisition Law of 1894, continued to wield its force by remaining the basic enactment from which land acquisition decisions and others laws stemmed. So long as the twin requirements of Eminent Domain theory- ‘public purpose’ and ‘compensation’- were satisfied, the legality of the acquisition held good. Murmurs and protests gradually grew louder though, particularly among disempowered margins that bore the brunt of the nation’s costs of development.

‘Today’s’ India: In the last twenty five years, democracy has further ‘deepened’, bringing newer voices, especially marginalised castes and regional parties. In post liberalization India, civil society and private industry also wield influence. Coalition politics is an unavoidable political reality. The State too is far from the uniform behemoth: apart from the Executive, Legislature and the Judiciary (held together and yet distinct within the tangle of ‘Separation of Power’ theories), there are numerous centre-state (and now, some local), debates around federalism. Within the emerging federalism, since various matters pertaining to ‘land use’ were anyway part of the State List in the Constitution, debates around land acquisition too have gradually shifted to the states.

Since 1991, and particularly in the last decade, while the State has remained the predominant actor, the private sector has also become significant, the latter’s role in economic growth being acknowledged by the State in policy decisions, including facilitation in land acquisition for ‘public purposes’. This development too, is not entirely new. The 1894 Act had envisaged such applications as well. The moot question however is whether the degree of such acquisitions has significantly increased in the last few years, given the rise of private enterprise and its wider acknowledgement by the State in economic growth. Eminent Domain still holds in such cases: the acquisition has to be for a ‘public purpose’ and ‘compensation’ has to be paid.

The Judiciary has become an even more powerful arbiter of such decisions, also stemming from the rise of Public Interest Litigation (PIL) as a legal tool since the 1980s. Where the political landscape is variegated enough to contain multiple competing voices, the term ‘public purpose’ too has become a subject of multiple renderings, where each voice has an opinion on what ‘public purpose’ is, and more significantly, what isn’t. A fiscal argument is beginning to open as well, in imagining the taxation and redistributive machinery (within the newer debates on fiscal federalism, such as the proposed Goods and Services Tax structure), to be tied to land use, and that in turn being possibly used to justify newer forms of ‘public purpose’ by newer private actors.

Why Balance?

The LARR Bill’s insistence on ‘balance’ (as articulated in its preamble and in various political pronouncements) requires attending to. Political ‘balance’ at the Centre would mean bringing around various ministries, (not all speak alike) and the coalition partners. ‘Balance’ within the federal structure would mean taking into account the views of various states, with multiple parties (regional and national) with diverse histories, development trajectories and local specificities (including increasing though still marginal, local government). Within the Separation of Powers frame, ‘balance’ would mean taking legislative and executive decisions, not contradictory to the

Constitutional and legal frame, over which an active, independent and powerful Judiciary sits in judgement. Democratic politics organizes itself among multiple stakeholders and the LARR Bill could also be seen as the State's institutional response to such various stakeholders.

The arrival of environmentalism as a legitimate countervailing discourse would stretch the idea of 'balance' further. Pitted with the State's determination to ensure industrialisation and 'modernisation' (through manufacturing and services, private and public) as the primary way of ending endemic poverty are difficult questions on the ecological and economic costs of such industrialisation. Some attention,, even if belated, seems also to be finally drawn to the plight of the adivasis, forest dwellers and the tribals who have borne the costs of most of the State's promises of development. There is the phenomenon of growing urbanization, with a third of the country living in a fraction of the country's land and producing two-thirds of the country's economic output. In the heady 'rural-urban' political rhetoric are also farmers (rich and poor, wealthy and landless) who are raising the acquisition stakes. All these elements provide the backdrop to understand why land acquisition has assumed centre stage in the little and big Indian political game.

The LARR Bill's aspirations are lofty: one look at its preamble removes all doubt : It aims to *"ensure a humane, participatory, informed consultative and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement thereof, and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto."* [Italics added]

In a word, balance. Coherence and clarity seem to be needs that stems from the demands of the Constitutional democracy itself.

This protean aim is a little different, at least on paper, from the 1894 Act's purpose.

The Federal 'Balance'

The LARR Bill's language does not tilt the federal balance. It derives its legislative competence from the Concurrent List (Entry 42, List III: 'Acquisition and requisitioning of property') to provide for a uniform central legislation. Both the centre and states can make laws on the entries listed in the Concurrent list. States will continue to have the power to enact their respective legislations and that process is already underway in some states (examples: West Bengal, Kerala, Rajasthan), since there is political momentum at stake here.

The legal issue then is how a conflict between the centre and the states gets resolved. In such cases, attempts will first be made to read such laws through principles of 'harmonious construction' (read together, to find unity and common purpose) and then on the basis of 'pith and substance' of the matter (in layman terms, discovering essential meanings in the text). Finally if there is 'repugnancy', then the Central Law will prevail to the extent of the 'repugnancy'. In matters of clear opposition,

Central legislation prevails on a matter involving the Concurrent List's legislation on the same issue.^x As far as the law is concerned, the Constitution and the Judiciary are clear.

That says nothing about political resolution though.

The LARR Bill does not attempt to tread upon troubled federal waters. All it says is that states are free to implement their own Rehabilitation and Resettlement (R&R) schemes, so long as they are above the floor prescribed by the LARR. This is where the law meets politics.

S. 100 of the LARR Bill states: *'Nothing shall prevent any state from enacting any law to enhance or add to the entitlements enumerated under this Act which confers higher compensation than payable under this Act or make provisions for rehabilitation and resettlement which is more beneficial than provided under this Act'*. The ball then is metaphorically in the state's half, to do better.

S. 101 of the LARR Bill further remarks that *'where a state law or a policy framed by the Government of a State provides for a higher compensation than calculated under the [LARR Act] for the acquisition of land, the affected persons or his family may at their option opt to avail such higher compensation and rehabilitation and resettlement under such state law or such policy of the State'*.

In other words, in a potential conflict between the Central enactment and a state law on adequacy of R&R, in so far as it is repugnant to the state law on the same issue, the Central law shall prevail. The LARR Bill explicitly emphasizes in its text itself, that the state law or policy on compensation and R&R could be better than the central one, in which case the affected persons have the option of availing the better of the two. States, even those ruled by the same party as the centre, understand this political dilemma. This is why the Government of Maharashtra, for example, opposes the provisions of the LARR Bill, stating the R&R requirements prescribed are too high.^{xi}

Questions of interpretation also arise where the language of the enactment is 'vague', in which case the Judiciary steps in. As an illustration, in the Calcutta High Court's recent upholding of the new Singur Land Rehabilitation and Development Act, 2011, Justice IP Mukerji also stated that the compensation provisions in the [Singur] Act were 'vague' and therefore the old provisions of the LAA 1894 should be incorporated into the Singur Act.^{xii}

In such circumstances, the LARR Bill would at least attempt to remove uncertainty, helped in part by the Supreme Court's own most recent statements that aim at removing the 'outdated' LAA 1894 with a new law on land acquisition.^{xiii}

The LARR Bill seems to be based on the premise that it is no longer politically possible for the states to balk at the LARR enactment on grounds of federalism. . By carving out R&R as a pre-requisite (once a certain prescribed floor is crossed), the LARR Bill seems to leverage the current politics around the dispossessed, especially at the time of elections. If Singur provided the political moment where land acquisition hit the national prime time, elections in Uttar Pradesh presented the political opportunity for a new enactment on land acquisition itself. State Government opposition to R&R will therefore also depend on whether it is facing an imminent election or has just completed one. (Uttar Pradesh facing an election will be different from Kerala where there is a new government in power. In West Bengal, the new regime seeks to provide reparations in Singur to build further political credibility. Other states may have other political and economic imperatives. Gujarat, which

makes claims of economic growth through incentives for industry, may try its own 'partnership' model in an effort to out-do the centre.

The availability of adequate resources is another factor. States could publicly announce that they are willing to comply with R&R but that financial issues keep coming in the way. In short, the federal question will not go away politically: what states do with acquisition also depends on which party is in power.

The Judicial 'Balance'

Within the ever evolving debate on Separation of Powers, where the Supreme Court draws its own 'laxman rekha' is also a matter for political and legal speculation. Any intrusion into the Basic Structure will call for judicial interrogation. The Basic Structure doctrine is an inclusive one, of which Fundamental Rights are a part.

The Parliament had rendered the right to property under Article 300-A (inserted through the 44th Amendment) a 'legal right' but not a Fundamental Right.

Article 300 A of the Constitution states that 'no person shall be deprived of his property save by authority of law'.

There has been some jurisprudential debate as to whether the phrase 'authority of law' in Article 300-A means law as broadly defined to be 'fair, just and reasonable' or whether it simply means law narrowly circumscribed as enactment, which otherwise survives tests of basic due process.^{xiv} If it is the former, issues of Fundamental Rights, through the notion of 'arbitrariness' emerge, raising further questions of possible violations of the Right to Equality in Article 14 of the Constitution. The courts, well aware of the eventful judicial history of property rights, have since Article 300 A's enactment, not entered the thicket of looking at 'law' in Article 300-A from the viewpoint of Fundamental Rights. Eminent Domain theory has held for the most part. From the latter standpoint, acquisition decisions on the part of the State will continue to be enforced, without running afoul of the law, so long as the basic procedure according to law is followed.

Yet, the tenor of recent judicial decisions in the current political context seems to convey a growing sense of judicial disquiet about executive action. Would the Judiciary then decide to second-guess Executive determinations of 'public purpose' without necessarily running into the same political debate that accompanied the Right to Property debates in the past? Is 'arbitrariness' the necessary window?

In the recent case of KT Plantation, the Supreme Court enshrines 'public purpose' and 'compensation' as within the purview of Article 300 A when the State acquires land.^{xv} In other words, both 'public purpose' and 'compensation' have been 'read into' the language of Article 300A. This means reading Eminent Domain into Article 300-A.

What then is so novel about this?

In the KT Plantation case, the five judge bench of the Supreme Court, headed by the Chief Justice, also stated variously that the meaning of Article 300 A was that 'a person cannot be deprived of his property *merely by executive fiat*, without any specific legal authority or without the support of law

made by competent legislature...Article 300 A therefore protects private property against executive action...but the question looms large *as to what extent* their rights will be protected when they are sought to *be illegally* deprived of their properties on the strength of a legislation... that law has to be *reasonable*. It must comply with the other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive or beyond what is required in public interest...not disproportionate to the situation or excessive...violation must be *of such a serious nature which undermines the very basic structure of the Constitution and our democratic principles...*^{xvi}

There is much to be gleaned from this enunciation. It cannot be mere executive action but also a law, which in turn has to be 'reasonable'. If arbitrary to the extent that the Basic Structure itself is undermined, the Courts will intervene. This is a telling message. Basic Structure can potentially apply to Article 300-A as well. The extent of protection, the nature of 'reasonableness' and the degree of judicial scrutiny of such law-whether 'minimum rationality' or 'strict scrutiny' or anything intermediate-these are yet unresolved. But a judicial opening has nevertheless been opened.

'Arbitrariness' is a valid ground for violation of a fundamental right (which the right to property no longer is). A move from the Supreme Court towards questioning the degree of such reasonableness by exploring supposed 'arbitrariness' (of Executive action or legislation) could potentially renew the precarious debate on Separation of Powers. It will require a politically interesting and significant enough case for the Judiciary to decide where to draw the line, even its own, and where to stretch it. Where a number of cases on land acquisition are being brought before the Supreme Court, one does not know which one could eventually turn out to be a possible violation of the 'basic structure' doctrine. The recent Noida Extension case could prove to be a political watershed.

In the absence of legislative clarity, the Supreme Court will proceed on a case-by-case basis. Without a clear law, it could lay down directions that also assume the power of law. Justice SU Khan evoked rather sanguinary metaphors in the latest Noida Extension cases before the Allahabad High Court, while remarking that 'land acquisition is no longer a holy cow but a fallen ox. Everyone is a butcher when the axe falls'.^{xvii}

It is the threat of increasing judicial oversight, and not the federal or popular complaints alone, which will decide the need for a coherent land acquisition law. In its absence, or in its abuse, the Judiciary could even enter the debate on 'public purpose' within Eminent Domain as well, not just grapple with abuse of procedural imperatives. . This could create another battle ground for the Executive at the Centre to grapple with- a political struggle with enormous political, social and economic consequences, if history is any witness.

The Supreme Court has already stated recently that the provisions of the Land Acquisition Act of 1894 'do not adequately protect the interests of owners/persons interested in the land...to say the least, the Act has become outdated and needs to be replaced at the earliest with *fair, reasonable and rational* enactment in tune with the constitutional provisions, particularly Article 300A...we expect the lawmaking process for a comprehensive enactment with regard to acquisition of land being completed without unnecessary delay...'^{xviii} [Italics added]

This is sufficient warning for the Executive and the Legislature to act upon. No surprise then, that the LARR Bill is being pressed forward by the Government at the Centre with urgency. The Minister for Rural Development sought support from multiple parties, acknowledging the complexity of its

passage and the fact that the ruling coalition does not have the numbers in the Rajya Sabha.^{xix} Perhaps responding to the Supreme Court, and particularly to its new enunciation of Article 300A, the LARR Bill incorporates compensation provisions as well as R&R, while also trying to provide some clarity on 'public purpose'.

From the Supreme Court's point of view, the Legislature will be expected to frame a law that does not detract from the Court's recent interpretation of Article 300 A and probably, do more on compensation and R&R. What is 'public purpose' and more significantly, what isn't, is a more difficult concept though, one that evades easy clarity.

Specific Themes within LARR:

A closer look at some of the broader aspects of the Bill becomes necessary.

I. Under the LARR Bill, is there any more clarity on "public purpose"?

The term 'public purpose', used to justify land acquisition and the State's 'inherently sovereign right' of Eminent Domain has become more relevant particularly with the emergence of more private actors. This debate has also become more strident with deepening democratic participation, that has highlighted the human and other adverse impacts of displacement on the very marginalized and vulnerable, particularly Dalits, adivasis, landless) in a variety of large-scale acquisitions such as forests and mining, dams, SEZs and urban displacement among others.^{xx} The Courts have traditionally taken a deferential view of the State's prerogative to decide on 'public purpose'. It has admitted that the term itself has to be 'compendious', 'not static' and that it would not be wise to define it exhaustively, once and for all.^{xxi} It is by its very nature an 'inclusive' definition, one that accommodates many illustrative elements but keeps room for future reasons and contingencies. It appears that "planned development" enjoys a higher degree of legitimacy.^{xxii} There is also a suggestion that a 'public purpose' benefits a large section of the community rather than particular interests.^{xxiii}

Significantly, the mere existence of private entities does not by itself render the purpose less 'public' if other elements of 'public purpose' are otherwise satisfied. This could create interesting possibilities. For instance, a new property tax regime (within the new debates on fiscal federalism) could constitute a major source of revenue by allowing the State to create a broader tax base from a more diversified number of private actors, which in turn would be spent in the public interest. Would the term 'public purpose' be used more expansively in such situations? This particular debate could also intensify around urban areas, as has been seen in some of the recent discussions in USA where the use of private entities in city revitalization has provoked interesting questions on 'public purpose'.^{xxiv}

At the same time, a number of very recent Supreme Court decisions point to renewed judicial activism, marking a departure from the tradition of deference. Justice Singhvi is quite forthright in the case of *Radhey Shyam v the State of Uttar Pradesh*:

"It must be accepted that in construing public purpose, a broad and overall view has to be taken and the focus must be on ensuring maximum benefit to the largest number of people. Any attempt by the State to acquire land by promoting a public purpose to benefit a particular group of people or to serve any particular interest at the cost of the interest of a large section of people especially of the

common people defeats the very concept of public purpose. Even though the concept of public purpose was introduced by pre-Constitutional legislation, *its application must be consistent with the constitutional ethos and especially the chapter under Fundamental Rights and also the Directive Principles. In construing the concept of public purpose, the mandate of Article 13 of the Constitution that any pre-constitutional law cannot in any way take away or abridge rights conferred under Part-III must be kept in mind. By judicial interpretation the contents of these Part III rights are constantly expanded. The meaning of public purpose in acquisition of land must be judged on the touchstone of this expanded view of Part-III rights. The open-ended nature of our Constitution needs a harmonious reconciliation between various competing principles and the overhanging shadows of socio-economic reality in this country.*’ [Italics added]

When this interpretation is read alongside the KT Plantation judgement, it appears that the Supreme Court could ask deeper questions regarding the legitimacy of ‘public purpose’, should a suitable case present itself in future.

In Radhey Shyam’s case, Justice Singhvi also remarked that ‘in recent years, the country has witnessed new phenomena. Large tracts of land have been acquired in rural parts of the country in the name of development and transferred to private entrepreneurs, who have utilized the same for construction of multi-storied complexes, commercial centers and for setting up industrial units.’

In light of such ‘phenomena’, Justice Singhvi seems to be entering a new thicket of Judicial-Executive relations:

‘Therefore, the concept of public purpose on this broad horizon must also be read into the provisions of emergency power under Section 17... The Courts must examine these questions very carefully when little Indians lose their small property in the name of mindless acquisition at the instance of the State. If public purpose can be satisfied by not rendering common man homeless and by exploring other avenues of acquisition, the Courts, before sanctioning an acquisition, must in exercise of its power of judicial review, focus its attention on the concept of social and economic justice. While examining these questions of public importance, the Courts especially the Higher Courts, cannot afford to act as mere umpires.’

This interpretation certainly goes beyond investigating procedural matters.

In a still more recent case, that of M/S Orchid Hotels, Justice Singhvi and Justice Mukhopadhyay categorically affirmed that no change in ‘public purpose’ would be permitted; that the State having acquired land for ‘public purpose’ (in this case, a ‘golf cum hotel resort’) could not subsequently transfer the land to private entities for private use; that this amounted to ‘diversification’ of public purpose; and that public purpose ‘cannot be over-stretched to legitimize a patently illegal and fraudulent exercise undertaken’.^{xxv}

From these decisions, it seems likely that the Judiciary will seek a wider role in determining what constitutes ‘public purpose’ in actual use of the land, without necessarily claiming to second-guess the Legislature’s intentions. It will certainly investigate abuse of the ‘urgency clause’ (where due process is largely dispensed with) through very careful lenses of strict scrutiny. It will check whether compensation has been paid. It will look deeper in examining the presence of malafides or ‘colorable legislation’. It will also ask if public purpose has been diverted for private use, once acquisition is complete.

But what exactly is 'private use'? If 'planned development' is legitimate, how do 'multi-storied complexes, commercial centres and industrial units' lose legitimacy, since the Development Authorities also claim that all 'planned development' must also have residential accommodation, commercial centres and industrial units? Or is the Supreme Court looking for a tell-tale case of diversification-one that blatantly ignores compensation and also seemingly dispenses with any creation of public utilities? If the land is acquired for planned development and all that is (initially) done is the construction of high rise apartments -is it a violation of 'public purpose'?

If the earlier right to property debates (before enactment of Article 300A) and the sacrosanct nature of a contract benefited the rich landowners, do then the new debates necessarily benefit the landless and the very marginalised? Does such judicial resolution differ-between land acquisition decisions in urban when contrasted with those in rural areas? Does it accept the Master Plan with unquestioned validity in the urban and yet question what is touted as planned development in the rural?

These are still unresolved questions.

What will the Judiciary do, when the new LARR enactment is in place? Will it question 'public purpose' or will it defer to Legislative discretion? The Judiciary will weigh in all options before plunging into these political waters. Yet, in a question of blatant abuse, where democratic stakes are high and the Executive is either in 'paralysis' or where its action is not bonafide, or where clearly "public purpose" is not served, the Judiciary will not look away. Even if it defers to legislative wisdom on 'public purpose', the Judiciary will still look at whether such 'public purpose' has actually been fulfilled.

But what is 'public purpose'?

Does the LARR Bill make 'public purpose' any clearer for the Judiciary to interpret or does it defer to the judicially accepted notion that the term by its very nature is compendious and never static, even to the point of vagueness?

The LARR Bill retains the legally largely uncontested and undisputed 'public purposes' (i.e. strategic interests, national security, infrastructure projects, and so on). These will not be played with. It is also unlikely that the Judiciary will step in here.

However, in keeping with changing socio-political trends particularly since 1991, the term 'public purpose' in the LARR Bill has also been expanded to include other newer uses of land, including land required for resettlement. Facilitation by the government for companies in public interest, for manufacturing/services, is also covered under 'public purpose', thereby legitimizing the role of private enterprise. This interpretation is also in line with the much quoted American judgement of *Kelo v City of New London*, where the existence of private entities itself in city planning for revitalization did not render a purpose (here an Integrated City Development Plan) less 'public'. The accompanying question of whether increase in tax revenues from local revitalization with increasing private entity involvement (whose redistributive benefits are then spread across a larger area) could widen the interpretation of 'public purpose', especially in urban areas, requires more exploration. .

However, the LARR Bill also introduces a couple of new categories in the definition of 'public purpose' which could open a new can of legal worms. Instances are where the government acquires

land in cases where benefits '*generally accrue to the public*' (undefined) or where it acquires land for private companies or in PPPs or in the provision of land for private companies in the '*public interest*' for production of goods for the public or provision of public services. In such cases, 80% of consent of the Project Affected Persons (PAPs) is required and the R&R provisions will apply. The 80% consent rider is prior to acquisition, but is it a check on the legitimization of 'public purpose' itself? Does less than 80% consent mean no 'public purpose' here? How much is enough?

The LARR makes the de-facto, de-jure, so to speak, in such cases, as long as R&R and 80% consent is upheld. This also effectively means that in these instances, where land is acquired for companies, for seemingly newer public purposes, the definition will cease to hold much consequential meaning, since such acquisition will essentially be legitimized and the battle will then shift to questions of adequacy of R&R. The LARR Bill's 'public purpose' definition does not fundamentally re-align the landscape in so far as 'public purpose' is concerned. Didn't the courts themselves say that 'public purpose' cannot be static; it is necessarily compendious; to define would be to limit?

However, what the LARR Bill does is enshrine 'process safeguards' to check whether or not a particular acquisition fits the definition of 'public purpose'.

The Social Impact Assessment, with a public hearing requirement, is a first process check. The Expert Group to appraise the SIA, constituted of 'independent' actors, would then examine if a particular project fulfils the purpose stated. Then a Government Committee could explore if benefits do outweigh the losses; if land acquisition is indeed a 'demonstrable last resort', that only the minimum area required is being acquired and if there is indeed 'legitimate and bonafide public purpose' for the acquisition. There is circularity in the argument, since the process checks would explore if 'public purpose' as per the list specified in the enactment has been fulfilled. The LARR Bill expects these processes to work as safety valves. The jury is nevertheless out as to whether process is an adequate substitute for substance-if it is a necessary or sufficient condition.

The LARR Bill also clarifies that no change in public or related purpose would be allowed. No change in ownership without permission would be allowed. Where the land remains unutilized for ten years, it would revert to the land bank of the Government. (Not to the earlier owners-a significant point which could raise judicial heckles) The 'urgency' clause, retained, is limited to few selected uses. The setting up a separate dispute settlement authority for LARR is another institutional measure, which would also explore the veracity of 'public purpose' claims.

Are these processes backed by serious consequences in questions of clear abuse? This will come down to questions of implementation, a matter for governance and the political economy.

A comparison on the definition of 'public purpose' between the LARR and the LAA 1894, provided in the table below, is relevant:

S. No	LARR Bill 2011	LAA 1894 (added by A.O. 1950)
1.	for strategic purposes relating to naval, military, air force, and armed forces of the Union or any work vital to national security or defence of India or State police, safety of the people;	Absent. But land acquired for such purposes anyway. And considered public purpose.
2.	for railways, highways, ports, power and irrigation purposes for use by Government and public sector companies or corporations	for a corporation owned or controlled by the State

	[Comments : however, railways, highways, electricity under respective Acts not LARR]	
3.	for project affected people for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;	Absent. for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State
4.	planned development or the improvement of village sites or any site in the urban area or for residential purposes for the weaker sections in rural and urban areas or for Government administered educational, agricultural, health and research schemes or institutions;	village-sites, or the extension, planned development or improvement of existing village-sites; for town or rural planning; for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned; for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860, or under any corresponding law in a state, or a co-operative society within the meaning of any law in any State; the provision of land for any other scheme of development sponsored by Government or with the prior approval of the appropriate Government, by a local authority;
	<p>the provision of land in the public interest for—</p> <p>A. use by the appropriate Government for purposes other than those covered under sub-clauses (i), (ii), (iii), (iv) and (v), where the benefits largely accrue to the general public;</p> <p>B. Public Private Partnership projects for the production of public goods or the provision of public services;</p> <p>the provision of land in the public interest for private companies for the production of goods for public or provision of public services:</p> <p>Provided that under sub-clauses (vi) and (vii) above the consent of at least eighty per cent. of the project affected people shall be obtained through a prior informed process to be prescribed by the appropriate Government:</p> <p>Provided further that where a private company after having purchased part of the land needed for a project, for public purpose, seeks the intervention of the appropriate Government to acquire the balance of the land it shall be bound by rehabilitation and resettlement provisions of this Act for the land already acquired through private negotiations and it shall comply with all provisions of this Act for the remaining area sought to be acquired.</p>	the provision of any premises or building for locating a public office, but does not include acquisition of land for companies; but land acquired for companies so long as 'public purpose' fulfilled

If the parameters of the definition on 'public purpose' (admittedly with their loopholes) are otherwise met, the legal debate may no longer about the existence of private companies. In RL

Arora's case itself, the Supreme Court had clearly laid down that the 'State is empowered to compulsorily acquire land for companies which satisfy the definition of being engaged in an industry which is essential to the life of a community whether or not the purpose for which the company acquires land is a public purpose'. The LARR Bill, in using particular phrases such as 'accruing general benefits to the public', 'public interest', 'provision of public goods or services', does seem to move beyond RL Arora's holding. These interpretations will satisfy private industry, even if they will be chafed by the R&R and the 80% consent requirements. This could also be an illustration of attempting to 'balance' the needs of the private sector with the redistributive mechanisms at the State's disposal.

The State clearly recognizes the role of private enterprise in development. What is up for debate however is whether in a particular instance, such development indeed does at all take place; who benefits from such development and what are the attendant costs, who bears them and if the law has been taken for a ride. It is here that the Supreme Court appears particularly interested. If the LARR Bill raises R&R requirements, the Courts will then check if the law has been followed.

The widened definition of 'public purpose' notwithstanding, the LARR enactment will still evoke adverse reactions from private companies who would wish to by-pass complicated acquisition processes and head elsewhere, looking for legal exceptions to the LARR Act. These companies will also balk at the application of R&R provisions (through various government departments and R&R authorities) even in privately negotiated acquisitions, if they acquire more than fifty acres of land in urban areas or more than hundred acres in rural areas. The 80% consent requirement will also cause considerable disquiet in the ranks of private industry.

Companies have responsibilities just like the State does: that is what the LARR Bill seems to warn. Going by recent Supreme Court decisions, the Judiciary is unlikely to run these provisions down on grounds of arbitrariness. On the contrary, it may examine in actual cases if the requirements have been entirely complied with. This too is the LARR Bill's gamble-using the Supreme Court's recent warnings to urgently draft a new Law, to justify the expanded redistributive provisions and then make the law fit into the Court's current imagination of justice and due process. Yet while procedural checks are supposed to act as safeguards, each procedural check can also turn into an opportunity for possible abuse of power, and increase scope for rent seeking and litigation.

II. What are the other 'safeguards' regarding land acquisition that may tilt the political balance back in favour of the ruling coalition at the centre?

The timing of introduction of the LARR Bill; the priority given to the Bill by the recently appointed Minister for Rural Development; the short notice within which the draft Bill was passed by Cabinet and then introduced in the Lok Sabha - all pointed to the Assembly elections in Uttar Pradesh in 2012 being fought in the backdrop of a serious debate emerging on land acquisition in the state. There was also a sense that the Central Government was beleaguered on multiple fronts in 2011, as a result of which political momentum was slacking. There were even reports that Anna Hazare would next enter the land acquisition debate, with predictable questions on whether rural India is being bypassed.^{xxvi} The idea of 'safeguarding' and then providing entitlements as part of redistributive

ends, gained significance in light of the prevailing political economy. Some salient aspects of this 'safeguarding' endeavour are:

1. **Rehabilitation and Resettlement:** If any, the LARR Bill's most significant 'innovation' is the introduction of R&R as a right (and not as policy), wedded within the acquisition processes of the LARR Bill itself (and not separately, as in previous legislative attempts). This is a significant departure from past practices including the Rehabilitation and Resettlement Bill, 2007 and various R&R policies which did not enjoy the status, legitimacy, and more significantly, the enforcement capability, of law.^{xxvii}

As per the LARR Bill 2011, an 'R&R scheme' has to be readied at the time of the notification itself and a separate R&R authority mechanism has been set up to oversee questions of R&R within the process pipeline.. The LARR Bill specifies in detail the nature of rehabilitation to be provided through specific infrastructure facilities and R&R. Elements of the R&R award and relevant infrastructural provisions are elaborately laid down in separate Schedules appended to the Bill. . It also specifies the detailed bureaucratic frame and the procedure governing R&R. Once the government issues a preliminary notification indicating its intention to acquire, the R&R structure starts operating in parallel (including the Collector, the newly appointed Administrator, the Commissioner, issue of draft Scheme, the Award, timelines for the Award and so on). Significantly, there can be no declaration of acquisition unless the R&R scheme is also published alongside. There can be no change in land use unless R&R is complied with in full. The LARR Bill envisages the setting up of a national monitoring committee and an LARR authority, with full powers of a civil court to oversee disputes. While such an institution will create dispute resolution benefits, it will also lead to the inevitable rise of litigation around land.

For the record, under the LARR Bill:

- a. Both Land Acquisition and R&R provisions will apply when: Government (central/state) acquires land:
 - (i) For its own use, holding or control
 - (ii) For the purpose of transferring to private companies for public purpose (including PPP projects but not highways (state/national))
 - (iii) On the request of private companies for immediate and declared use by such companies for public purposes

The exception here is Scheduled Areas where specific law applies (i.e. under the 6th Schedule, Constitution of India)

- b. R&R provisions under the LARR Bill will apply where:
 - (i) A Private company acquires/purchases land (>100 acres in rural areas; >50 acres in urban areas) through private negotiations with the owner, while otherwise following due process requirements under LARR (i.e. application to District Collector; Collector-Commissioner process; R&R award; no change in land use if R&R not complied with etc).

This trigger of 100 /50 acres as the case may be, as well as the R&R process, seems to apply irrespective of the 'public purpose' requirement under Eminent Domain (since Eminent Domain

applies only to State acquisitions). This is interesting, because it assumes that space, and the specific minimum quantity of space, renders 'public consequence' for otherwise private actions, such consequences being significant enough to trigger R&R provisions.

- (ii) R&R provisions under the LARR Bill will also apply where a private company requests the Government for acquisition for a 'public purpose' (even if it is a partial acquisition request, R&R provisions will apply to the entire area acquired by the private company)

This means that the LARR Bill ruffles the private commercial waters as well. R&R will apply even to private companies who acquire through private negotiations, once they cross the floor of 100 (rural) or 50 (urban) acres. This also means that R&R provisions will not apply in private company acquisitions below 100 acres in rural areas or below 50 areas in urban. This will lead to companies staying under the radar (eg. 99/49 acres as the case may be) and by using proxy acquisitions methods (i.e. through another company or 'front companies'; through joint ventures and so on). This will create tangled legal debate on the nature of inter-connectedness of entities involved, whether 'front' companies are operating, if subsidiaries are involved and so on.

The other option for private entities to stay out of the R&R requirements is to use the exceptions under the LARR Bill (such as the SEZ Act, among others) and possibly tweak relevant state laws and policies. The exceptions are discussed in greater detail later in the section on Non-Applicability. The Central Government's political gamble is to rely on the inevitability of R&R, in part facilitated by a strong Judiciary advocating it, as a significant redistributive move. The private companies will be unhappy about R&R applying even for privately negotiated acquisitions if a trigger is crossed. In the political balance, the Government believes the time is opportune for such a move, even in the face of what the demands of economic growth. This is a critical redistributive question around which a number of debates around the Bill will circulate, in the Parliament and elsewhere.

2. The renewed thrust on 'process'

As discussed in the elucidation of 'public purpose', the LARR Bill creates a number of institutional check posts - each one taking off from where the previous one left- as a mechanism to ensure institutional redress. The plethora of process mechanisms include the Social Impact Assessment (SIA) with a provision for public hearing (including the Gram Sabha and local municipal consultations)); timelines for document preparation (or in their non-compliance, the prospect of risking lapse of proceedings: eg. declaration to be within 12 months of preliminary notification; preliminary notification, if not within 12 months of the SIA, will require a fresh SIA); institution of new posts (Administrator R&R), committees (at government level); public hearings, institutions (National Monitoring committee and a LARR authority with judicial powers and responsibilities). The SIA report which will be appraised by an Expert Group (consisting of two 'non-official social scientists', 'two experts on rehabilitation' and a 'technical expert in the subject relating to the project') to decide on questions of balance (costs- benefits, public purpose, public interest). The SIA report is to be considered by a Government Committee, which in turn will again look into questions of public purpose, balance of convenience, minimum area acquired, 'demonstrable last resort' of acquisition and so on, including verification of the whether the 80% consent rider has been complied with in privately negotiated acquisitions.

The Supreme Court in the recent R. Indira Saratchandra case, in the verdict by Justice Singhvi and Justice Mukhopadhyaya, has held that if the award is not made within two years of the declaration of acquisition, the acquisition proceedings will lapse.

Yet, the questions still arise: is it all too many processes without accountability? Are these processes necessary and sufficient? Do they create opportunities for the bureaucrats to mediate? How does one create an apparatus that oversees the institutional process without becoming complex, byzantine and subject to rent seeking? Do more processes create more transparency or less? Opacity also increases delay and raises costs.

Who will gain the most from these process safeguards: the PAPs, the industry or the bureaucracy? Or conversely, who stands to lose the most with the new processes and institutions under the LARR Bill: the PAPs (running from pillar to post?); the industry (fighting shy of delays and bureaucratic logjam) or the bureaucrats themselves (multiple authorities, each fighting for turf while attempting vigilant watch keeping)? The LARR Bill places itself at the heart of this quandary.

The LARR Bill will argue that the Rules to be subsequently made will have to ensure sufficient safeguards through checks and balances. After the enactment of the Right to Information Act (and with newer issues emerging in the proposed institution of the Lok Pal and in other Bills for public redress of grievances), information has become a pivotal frame. Creating, sharing, distribution and verification of public information, going beyond defensive measures required by the strictures of law, as a critical tool of democracy, will become increasingly important for implementation.

3. The 'Urgency' clause:

The LARR Bill restricts use of the 'urgency clause' to requirements of defence, national security or emergencies arising out of natural calamities- in short the very urgent. This is an attempt to plug the 'urgency clause' loophole under LAA 1894 which allowed the State to largely willy-nilly dispense with due process requirements (especially the right to object to a Collector), and even transfer the land for other uses. The LAA 1894 did not specify exact circumstances where the urgency clause could be invoked. The LARR Bill also states that in such cases, 80% of the compensation has to be paid before taking possession, and an additional amount of 75% of the market value shall be paid where acquisition proceedings have already been initiated.

In the recent case of Devendra Kumar Tyagi v State of Uttar Pradesh, while running down the State's use of the urgency clause, Justice Singhvi was categorical about the abuse of the current urgency clause:

"The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 [of the LAA 1894] but that, by itself, does not justify the exercise of power by the Government under Sections 17(1) and/or 17(4) [of LAA 1894]. The court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1) [of LAA 1894]."

The Supreme Court's admonitions have exposed the urgency clause, especially in cases where more than a year would pass between the notification (on urgency grounds) and the declaration of

acquisition. Still more significantly, those lands would then be used for seemingly less urgent reasons-such as building residential high rises. The Supreme Court in recent verdicts has been scathing of such practices. Abuse of the urgency clause has even provided an avenue for the courts to ask more direct questions on what goes beneath, 'in the guise of development'. And the urgency clause's misuse could even provide a window for the courts to ask difficult questions on 'public purpose,' the bane of the debate at the first place. From the Executive's point of view, the LARR Bill's laudable decision to limit the urgency clause to the very minimum is but a response to the court's recent pronouncements. If the LARR Bill doesn't do it, the courts will. In any case, no change of purpose will be allowed under the LARR Bill.

4. Acquisition of Irrigated Multi-Cropped Land

The first draft of the LARR Bill (dated July 27, 2011) called for a complete halt on acquisition of multi cropped irrigated land. The lessons from Singur seemed clear, where political opposition to land acquisition brought down the longest serving communist government, (ironically enough, one that came to power on the plank of land reform itself).

By the time the new LARR Bill was introduced in September 2011, some compromises entered the language of the section that innocuously couches itself under the rubric of 'special provisions that deal with food security'. While no irrigated multi-cropped land shall be acquired, there are three noticeable caveats:

- a. Under '*exceptional circumstances*', '*demonstrated last resort*' (both legal devils for the future) where such acquisition shall not exceed 5% of total irrigated multi cropped land in the district. Whenever such multi-cropped land is acquired, an equivalent area of culturable wasteland has to be developed.
- b. However, where the land is not irrigated multi-cropped land and the net sown area in a district is less than 50% of the total geographical area, such acquisition shall not exceed 10% of such net sown area. This however does not apply to projects 'linear in nature such as railways, highways, major district roads, irrigation canals, power lines and the like' (i.e. what is perceived as essential infrastructure, some of whose acquisition is governed by their respective Acts in any case)

This provision is certainly controversial. In calling the general ban on multi-crop land a necessary measure for 'food security', it is at once directed at winning over those particular voices that are vocal about agriculture, environment and the very rural. By doing so, it also send the political message that there are lessons to be learnt lessons from the Singur episode. At the same time, by creating the exceptions, it is trying to win over the industry as well. This is once again delicate political balancing. In Parliament, depending on the nature of the rural vote bank and the availability of productive land, this debate will turn.

5. Linkages with Environment: Environment considerations were also expected to be given serious thought then, given the Rural Development Minister's previous (and rather eventful) stint in the Ministry of Environment and Forests, one which had created serious debate within the Central Government on the brass-tacks and project based nitty-gritty of sustainable development itself.

Yet, it is debatable to what extent environmental considerations find a serious place in the LARR Bill, other than the general desiderata. Environmental issues (water, biodiversity rich areas, forests, energy) do not find explicit mention, barring an odd line about Environmental Impact Assessment (where done) or a specific reference to the Government Committee (after the SIA and the Expert Group Appraisal) which can cross-check if such acquisition causes only 'minimum disturbance to the ecology' and if the Collector has otherwise explored the possibility of acquiring waste, degraded and barren lands. It is worth asking what happens to India's prime forest lands, now that the 'Go No Go' policy on coal mining is on its way out on grounds of 'inadequate legal basis'.

Since no exception is carved out in the LARR Bill for the Forests Rights Act, 2006, does it mean that the acquisition of such areas for mining-related activities is governed by the specific mining related Acts (or the new Mining Bill when enacted) and not by the LARR enactment? What consequence does that hold for the rights of forest dwellers? Does the exception under the Scheduled Areas cover all forests rights or are there significant exceptions, where the adivasi once again stands disadvantaged? EIA is not a mandatory requirement under the LARR Bill. Does it mean that consequences of ecological damage would be governed by specific environmental enactments (and Supreme Court oversight) rather than the LARR Bill itself? ^{xxviii} In a recent proposal to the Prime Minister, the Minister for Rural Development has suggested that all land acquisitions in tribal lands be decided at the Gram Sabhas.^{xxix} This could be interpreted as an attempt to assuage legitimate concerns of tribals, even though the actual fine print needs to be reflected in legislation.

6. Project Affected People (PAP): The quest of reaching out to the most vulnerable—those who bear the brunt of acquisition decisions—seems to have found some echoes in the definition of 'affected family'—which includes not just the owners of the land but also those whose primary livelihoods stand affected, without necessarily owning the land. This includes forest dwellers, share croppers, agricultural labourers, artisans and also urban dwellers living for the last three years whose livelihoods are affected.

The stage is also set then for a formal acknowledgement by the State of an institutional tussle between PAPs and companies in cases where large tracts are involved. In particular instances of acquisition in the public interest where the benefits 'largely accrue to the general public' or in the case of PPPs for public goods and services or in acquiring land for private companies for production of goods and services, the requirement for prior consent of 80% of the PAPs renders the political contest legal-institutional validity.

The contest over retaining the 80% consent requirement (applicable in particular instances) will be fought to the hilt. The requirement could be diluted, depending on the nature of the debate. If the number is retained, it could be a lever to address voices that have generally resented the growing rise of the private sector in land acquisition decisions. At the same time, the private sector would consider this requirement a serious disincentive. The Parliament will decide how much conveys the right balance.

However, a legal loophole still persists. PAPs are not defined, even as a number of related definitions abound: 'affected family', 'persons interested', 'land owners', 'marginal farmers', 'landless' and 'displaced family'.

Are PAPs to be understood as each one of these categories-or-are PAPs a sum of all of them? This question is important in matters pertaining to implementation of the 80% consent requirement. When 80% consent is required from PAPs, who will be the ones whose consent is asked for?

III. Applicability: Does the LARR Bill really provide a framework to cover the entire expanse of land acquisition decisions in the country? Within the federal set-up, what is outside its reach? What does it not apply to?

The exceptions to the LARR Bill manifest the circumlocutions of coalition politics and inter-ministerial turf battles within the Central executive.^{xxx} They raise questions as to whether political compromise is the only way to move legislation forward, along with attendant questions of how much compromise, by whom, for whom and, somewhat significantly, for what ends.

The earlier draft stated that the LARR Bill 2011 would override other legislations. This would have been interesting, given that the SEZ Act, for example, also states that it overrides other legislations. However, there are no such surprises in the latest LARR draft. The latest LARR Bill draft, cleared by Cabinet, clearly mentions that, unless the Central Government specifies by notification (on applicability of compensation and R&R provisions), the LAAR does not apply to many significant enactments pertaining to land acquisition and use, including, the following enactments:

- a) The Special Economic Zones Act, 2005
- b) The Cantonments Act, 2006
- c) The Land Acquisition (Mines) Act, 1885 [will the new Mines and Minerals (Development and Regulation) Bill, 2011 also be among the exceptions?]
- d) The Metro Railways (Construction of Works) Act, 1978
- e) The National Highways Act, 1956
- f) The Petroleum and Minerals Pipelines Act, 1962
- g) Resettlement of Displaced Persons (Land Acquisition) Act, 1948
- h) The Coal Bearing Areas Act, 2003
- i) The Electricity Act, 2003
- j) The Railways Act, 1989
- k) Works of Defence Act, 1903
- l) The Damodar Valley Corporation Act, 1948
- m) The Ancient Monuments and Archeological Sites and Remains Act, 1958
- n) The Indian Tramways Act, 1886

In other words, between August and early September 2011, (i.e. even before Parliamentary and Centre-State debate) internal discussions within the Central Government helped dilute some teeth. The Minister for Rural Development called the first draft his 'wish-list' and the second an inevitable political compromise.^{xxxi} Political compromises also save the Government from tortuous legal wrangles over the supremacy of one Central legislation over the other.

At the same time, the LARR Bill does sneak in an exception to the exceptions: it keeps open the possibility in future for the LARR enactment to be made applicable to any of the laws specifically exempted. All that the Central Government needs to do in such cases is to make specific

notifications to make LARR applicable in the case of each such law.. This 'exception to the exceptions' can come alive or remain in cold slumber, depending on the political weathervane.

Also for the record, other strategic State interests are governed by their respective enactments: Mining, Coal, Highways and Railways are not under the LAAR Bill. The State's historical dominion over strategic defence, cantonment areas, resource extraction, railways and roads continues under these respective specific laws.

Forest Rights provides another dilemma. Unlike the exception carved out for scheduled areas, no such similar autonomy seems to be carved out in the LARR for the Forests Rights Act, 2006. What is the consequence of this, *vis a vis* non-scheduled areas where forest rights are involved? When this situation is read with the exception for the Coal Mining Act (to which LAAR Bill does not apply) or the new Mines and Minerals Bill, do land acquisition decisions in areas otherwise governed under Forests Right Act, where mining also predominates, get decided according to the LARR Bill or according to the Coal Bearing Areas Act/new Mines and Minerals Mining Bill? What consequences hold then for the historically disadvantaged adivasi in such land acquisitions?

In light of these exceptions to the LARR Bill, two scenarios for the private sector outside the LARR Bill appear imminent:

The private sector in real estate township development will consider R&R for privately negotiated acquisitions and the 80% consent requirement to be its most significant concerns. It will attempt to remove R&R requirements, failing which, try to raise the R&R floor from 100/50 acres. The role of land 'aggregators' becomes important. They will play technical ball and individually keep under the 100 acres/50 acres radar, stating that, under a strictly literal interpretation of that particular LARR section, the R&R provisions will only apply to *a* company that exceeds the said limits and not cumulatively to the limits themselves. This means company A for example will stay under 99/49 acres (as the case may be), company B will also stay under 99/49 acres and so on. If the floor goes higher, the aggregators will continue to just below the limits mentioned.

There is also a possibility of using proxy acquisitions methods (i.e. through another company; through joint ventures, etc), which will trigger off 'corporate veil' issues on nature of inter-connectedness of entities involved, whether 'front' companies are operating, if subsidiaries are involved and so on.

If queried in a particular case, given the tenor of recent Supreme Court verdicts, it is likely that the Court will make R&R provisions mandatory whenever 100/50 acres (or the final number) limit is reached, irrespective of whether one or more companies are involved. A clarification in the LARR Bill itself on this would be useful though, to pre-empt doubts.

Foreseeing such imminent possibilities, there will be attempts to raise the R&R floor to above 100/50 acres so that more companies can stay under the R&R radar. It is difficult to predict if the LARR Bill will indeed be tweaked at this stage to accommodate such concerns. In such circumstances, private entities will look for options outside the LARR Bill's provisions.

Two Avenues outside LARR Bill 2011:

The private sector will find two avenues to come under: first, the SEZ Act and second, integrated townships under respective state Acts and policies (specific township policies and so on). Those who would not come under either of these two options, will willy-nilly be brought into the LARR fold.

Let's look at each scenario:

First, since the SEZ Act is carved out as an exception under the LARR Bill, integrated township development through the private sector will try to come under the SEZ Act and not under the LARR Act. It will use the category of 'non-processing areas' (under the specific provisions of the SEZ Act and the SEZ rules).^{xxxii} In such cases, the SEZ Act and the SEZ rules will apply and the integrated township will have to follow all the necessary procedural requirements laid down. However, while the SEZ Act provides an exception, the entire area has to be labeled an SEZ under the SEZ Act and then the 'integrated township' as a 'non processing area' would be a part of the larger SEZ. This is not easy, given the size of the SEZs, the difficulty in labeling them and in getting them notified, and the general political climate, depending on the state(s) such SEZs find themselves in.

So, an easier alternative for the private sector may turn out to be the label of a 'Special Township' or an 'Integrated Township' under respective state Town Planning Acts and relevant state policies on townships. The private sector would try to negotiate with states to reduce the minimum contiguous area for such townships, in cases of privately negotiated land acquisition (less than 100/50 acres as the case may be), thereby also stay under the LARR Bill's R&R radar. This is where the cat and mouse game with the LARR Bill has already begun.

The LARR Bill is clear that states are free to enact their own legislations and policies on land acquisition, so long as those provisions on R&R are not less than what is provided in the LARR Bill. Given the Supreme Court's current predilection for coming down heavily on possible abuse of power (along with an eye on redistribution), in the event of a potential conflict between the central enactment and state provisions, the central enactment is expected to prevail, to the extent of the 'repugnancy'. This will give the LARR Bill precedence.

The figure of 100 acres (rural), which is the R&R trigger under the LARR Bill, is compatible with the 'minimum contiguous area' mandated for a Special Township in Maharashtra. (Also, Karnataka has identified certain areas under Integrated Townships that exceed the 100 acre figure)^{xxxiii} Curiously enough, the Press Note 3 (2002 Series) on FDI for the development of Integrated Townships had also mentioned the 'minimum area' as 100 acres. However, still more curiously, the latest FDI Policy (October 2011), in the case of 'development of townships', does not seem to reflect any such requirement (while at the same time generally not allowing FDI in the 'Real Estate Business')

This seems to be the LARR Bill's gambit - by keeping alive the option of applying the LARR Bill's provisions in those enactments through specific central notifications, it seems to be second-guessing a possible Supreme Court directive requiring better compensation, more humane land acquisition or even R&R. It is increasingly becoming realistic that the Supreme Court will, even if later, try to bring some R&R frame into acquisition, even in SEZs and in the integrated townships. It will be strategically convenient for the Supreme Court to rely on the LARR enactment's R&R provisions rather than revisit the 'laxman rekha' on property rights again.

This debate will get even more interesting in the case of the new National Manufacturing Policy (NMP) of the Central Government which aims to create 100 million new jobs by 2022 by facilitating 'National Manufacturing Investment Zones' or NMIZs, each not less than 5000 hectares in area, which would be labeled 'industrial townships' by the state government, under the proviso to Article 243 Q of the Constitution (which incidentally does not require a municipality to be constituted).^{xxxiv} The NMP states that 'land has emerged as a major constraint for industrial growth...the Government will take measures to make industrial land available', where the state government would be responsible for the selection of land (also through land banks). The administrative structure of these NMIZs would be a Special Purpose Vehicle (SPV) consisting of the central and state governments and the developer.

The Delhi Mumbai Industrial Corridor (DMIC) project, for example, straddles a number of states, where the Cabinet Committee on Economic Affairs has already sanctioned Rs. 17,500 crores for the development of seven industrial cities along the corridor.^{xxxv} Will land acquisition and R&R requirements of these cities (or of the NMIZs under the NMP) be governed under the LARR enactment? If they come under the state route, the LARR Bill states that the state's R&R requirements cannot be less than those prescribed under the LARR Bill. Will these cities then try to come under the SEZ route too? These are as much legal questions as political ones.

In any case, requirements of R&R, especially with the 100 acre/50 acre floor, could in turn make massive economies of scale difficult to achieve, since there will be efficiency costs of using multiple aggregators and multiple R&R for smaller land parcels. The consequence of this could be an anti-monopoly/ anti-trust effect on real estate, which could in turn also make international real estate entities think twice before entering the real estate market (currently, in any case, FDI in 'real estate business' is not allowed, while townships are allowed)

'Small' 'tall' and 'beautiful' (?) new Townships

As a result of the R&R requirements, as an indirect consequence, it is possible that future new urban centres in India could become relatively smaller townships with high-density structures-in a manner that ensures efficiency for private industry without fighting afoul of the law. If you cannot stretch horizontally, could you go up then? Small townships, 'inter-gated' (rather than 'integrated' communities?) with environmentally efficient high rises- could that be the Indian urban story of the future? This too will be dependent on the resolution of questions regarding optimal FSI viability. The political debate on FSI will vary across locations: newer peripheries will be different from Greenfield sites and they in turn will be different from inner city areas.

Such a development also raises definitive questions on the nature of urban form, and the associated political and socio-cultural questions of who lives in these new urban centres, and who is excluded. This is only partly linked to the question of land acquisition, and deserves better exploration.

Whether the LARR Bill unwittingly creates spatially decentralised or uniform urbanisation depends on which way the states go, in conforming with, or detracting from the enactment. This also depends on which way the Supreme Court's winds blow. Will it enforce uniformity or in keeping with the federal spirit, acknowledge diversity?

In short, the LARR Bill covers a significant landscape but also leaves out large 'islands' at the margins. These margins are critical enough to impact future land use and form. This LARR Bill has so far had a short political history. Enactment in Parliament will call for various forms of political compromise, between the government, the private sector, civil society, various states and the political parties. In the meantime, and afterwards, the Supreme Court will continue to watch, eagle eyed,, thereby rendering some additional legal complexity to an already potent political concoction.

III. Are compensation provisions adequate?

Since much of the disgruntlement seems to stem from perceptions of inadequate compensation as much as from abuse of process, the story about compensation, initiated in the late 19th century law, is far from over either.

In KT Plantation's case, the Supreme Court recently read 'compensation' into the requirements of law under Article 300A of the Constitution. Compensation, in previous decisions, has been held to be 'just equivalent of what the owner has been deprived of' (Bela Banerjee's case), 'something not illusory' (Shantilal Mangaldas case). Yet, the same Supreme Court has also held in Bhim Singh's case, that Rs. 2 lacs was adequate, whatever was the value of the property.^{xxxvi}

In the recent case of Rajiv Sarin, the Supreme Court held that 'as mandated by Article 300 A, a person can be deprived of property but in a just, fair and reasonable manner...where the State exercises the power of acquisition of a private property thereby depriving the private persons of that property, provision is generally made in the statute to pay compensation to be fixed or determined according to criteria laid down in the statute itself...the adequacy of compensation cannot be questioned in a court of law, but at the same time the compensation cannot be illusory...the criteria to determine possible income on the date of vesting would be to ascertain such compensation paid to similarly situated owners of neighbouring [forests] on the date of vesting'.^{xxxvii}

In the latest Noida Extension case where dissatisfied farmers appear ready to approach the Supreme Court. These farmers have reported that the 64% hike in compensation as per the Allahabad High Court is inadequate and that they are entitled to the prevailing circle rate of Rs. 18,000 per square metre.^{xxxviii}

In such a scenario, the LARR Bill, being the governing statute when passed, needs to provide much need clarity on the criteria for compensation. (R&R details being already provided in the Schedules). The LARR Bill computes market value on the basis of the documentation available with the official records. It is expected that such official value will under-represent the real value of the land, since stamp duty payments are high. According to the LARR Bill, the market value is the higher of: average sale price of surrounding lands for the past 3 yrs or the price mentioned in the Stamp Act for registration of sale deeds. This value is then to be multiplied by a factor of 2 in rural areas and by 1 in urban, plus an amount of 100% more added as solatium. It is yet unclear why the ratio of 2:1 was chosen, if such questions are essentially those of relative economic value, determined by the manner the market operates. This ratio seems to also simultaneously incentivize the transformation of rural areas (with better compensation prices) into the urban, while keeping open the political and institutional avenues for receipt of entitlements specified, and then even perhaps enabling the continued retention of the hitherto rural character of the land if acquisitions are subsequently nullified for abuse of law or process

The LARR Bill relies on a retrospective price, based on previous and not future use. This approach seems to raise questions on price and not value, if the price to be paid as compensation does not reflect the changed use of the land. There are examples of recent State Acts which examine whether more can be done: the new Kerala enactment did initially discuss Redeemable Infrastructure Bonds/Transferable Development bonds instead of cash; Rajasthan's new Bill explored the possibility of providing 25% of developed land in lieu of cash for urban development and housing purposes; Gujarat follows a TP Scheme model where the losses are spread across the area; in Maharashtra, there have also been instances of the community organizing themselves to form a corporation, where farmers pooled their lands and each farmer became a shareholder of the company in proportion to the value of the respective land vis a vis the cost of the total land.^{xxxix}

It is this spirit of partnership, as enshrined in the LARR Bill's preamble, that the LARR Bill may do more to provide, without which other distributive suggestions are inadequate. One way of ensuring such partnership is through incentives in the actual benefits of the land acquired for newer and more productive uses. This is what makes opportunity costs come alive. This shifts the political stakes from a purely entitlement driven model for the dispossessed to one that also talks about stakeholders and partners of development. If the farmers foresee a possible rise in incomes from selling off their lands, they will, if the prospect of getting a share of the proceeds of future use holds promise compared to existing returns from the land. 'Impatient capital', in a difficult economic environment, which will look for a one-time settlement of dues and not seek to engage in a protracted continuum of negotiations with affected parties. Livelihood options are another issue altogether, dependant on the availability of requisite skills and general employability.

Of particular relevance also here are comparisons with adjoining areas, the gains that are made by those who do not lose land but actually benefit from the rising value of land through acquisitions in such areas. The LARR Bill does provide particularly that 'where the land is acquired for urbanization purposes, twenty per cent of the developed land will be reserved and offered to land owning project affected families, in proportion to the area of their land acquired and at a price equal to cost of acquisition and the cost of development'.^{xl}

How does one take care of potential value - in commonsense terms, the price paid by a willing purchaser to a willing seller after taking into account the existing-and potential - possibility of the land? In its absence, it is likely that the usual arguments about computation will continue: lack of land titles, under-valuation of land for stamp duty purposes, information asymmetry, delays pushing cost of land up; lack of speedy implementation and so on. In R&R, the responsibility of the State (and private companies) will be particularly tested. Will implementation of R&R as a precondition be effectively implemented? Is there enough land for R&R, especially to implement the 20% land for land provision? Where the land market is beset with large information and other asymmetries, questions are rife as to whether the State can indeed effectively manage compensation and fair payment of market value.

The immediate question stemming from the compensation and market value approaches is where will the new urbanisation take place? Will there be an increasing number of greenfield sites (whether under the LARR umbrella or as SEZs or under possibly diluted requirements of townships) or are we going to continue to see urbanisation as increasing peripheral development, incrementally across the blurred rural-urban/ peri-urban boundaries?

IV. Does the LARR Bill tilt the balance towards urbanization? Does it at least acknowledge the growing significance of the urban in the Indian socio-political and economic story?

31% of India's population, living in urban areas, generates more than 65% of the nation's wealth. Yet, the urban is not yet considered as politically significant as the rural, also because the number of rural seats in Parliament far outnumbers the urban. The LARR Bill understandably continues to be within a rural frame, while also envisioning transitions into urban (or 'rurban'?) settlements. There is acknowledgement of the urban in the LARR Bill in various issues such as:

- (i) The Preamble: "to ensure a humane, participatory, informed consultative and transparent process for land acquisition for industrialization and development of essential infrastructural facilities and urbanization...."
- (ii) PAP: Definition of "affected family" includes a "family residing on any land in the urban areas for preceding three years prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land".

This creates a very interesting question of compatibility of newer Government schemes such as the Rajiv Awas Yojana (RAY) with the LARR Bill. Does it mean that, the De-Soto model of formalization of title is a necessary pre-requisite for residence-for any benefits of LARR to go to the urban poor, in the event the land they occupy is acquired? Or would mere proof of use suffice? Would public lands in urban areas stand on the same footing as private? Or would public lands, by the very fact that the State owns them, require no more R&R measures? Would hawkers on the street (whose primary livelihoods are affected) stand on a better footing under the LARR Bill than others who squat on public lands whose primary livelihoods are not affected?

- (iii) Process: a) Social Impact Assessment would have to be carried out in consultation with appropriate local body (equivalent to Gram Sabha) in urban areas; b) The notification processes will have to be followed for acquisition in urban areas as well (copy to be made available at urban local body office); c) The Commissioner R&R would need to conduct post-implementation social audit in consultation with appropriate ULBs.

The SEZs, the NMIZs, the industrial townships, and the integrated townships are all carving themselves out as separate administrative and governance frameworks- outside democratic municipal governance. This has political implications on decentralization itself. The local bodies are already severely strained in terms of 'funds, functions and functionaries'. While the LARR Bill does provide for consultative roles for the urban local bodies, such consultation will require more funds, functions and functionaries for local bodies to be of meaning..

- (iv) Compensation: The urban is factored in the minimum compensation package: factor to be multiplied by 1 in urban areas (eg. 2 in rural areas); also in solatium, final award (factor of 1)

(v) Public Purpose: The definition of “public purpose” includes: “the provision of land for planned development or the improvement of any site in the urban area or provision of land for residential purposes for the weaker sections in rural and urban area.” This seems to be an indication that RAY schemes could be accommodated within the LARR framework.

(vi) R&R:

a) R&R provisions apply to private company acquisition of >50 acres in urban areas;

b) In R&R: for affected families whose primary livelihoods are affected (in addition to Schedule I), there is provision for housing units in case of displacement (in the form of a constructed house of not less than 50 sq.m in plinth area or alternatively, if the option not to take the house offered is exercised, a one-time financial assistance for house construction of Rs. 1,50,000 would have to be provided) Houses, if necessary would be provided in multi storied building complexes (Schedule 2);

c) Land for land: ‘Where the land is acquired for urbanization purposes, 20% of the developed land will be reserved and offered to land owning project affected families, in proportion to the area of their land acquired and at a price equal to cost of acquisition and the cost of development; d) Infrastructural amenities for new villages developed for resettlement are to be connected through public transport to the nearby urban area

The R&R provisions once again call to mind the RAY scheme. The property rights framework under the RAY Scheme is yet to be finalized (a range of tenureship models are envisaged). The RAY Scheme may be pre-conditioned on availability of title, something that the new Land Titling Bill, 2011 also seeks to ensure. At the same time, while Indira Awas Yojana (IAY) finds explicit mention in the Schedule on R&R, RAY is conspicuous by its absence, further driving home the rural frame within which the LARR Bill seems to operate.

In a nutshell, the LARR Bill is still situated in a rural frame, envisaging transition to urban scenarios. It is also cognizant that such transitions would only happen where land is being acquired in predominantly rural areas. This is where the productivity of land argument is especially strong: would there be more value for land in selling out or in keeping it, in a country where ties to land are also so resonant with emotional and social linkages, apart from the pure economic? The debate on multi-crop land is also significant here. Is the LARR Bill about to change the pristine Gandhian idea of rural –the myth of the ‘self sufficient’ arcadia or will India finally go with Ambedkar and Nehru? Or will linkages and smaller towns (inter-connected, democratically governed and less exclusive) provide a crucial ‘rurban’ transition point? There are significant cultural questions involved, not the least involving modernity and its very discontents. These questions, however significant, are beyond the limited scope of this paper.

Who governs the new urban India (with all the various political carve-outs?) This is where the politics confronts the law. In a country with such multiple voices, these are questions that one can no longer

ignore. The LARR Bill does not seek to find solutions to the political questions but is inevitably caught among myriad different political voices.

Conclusion: What does LARR mean for a changing India?

LARR is a legal attempt to ensure that a coherent framework is in place for land acquisition, recognizing the multiplicity of actors involved, the requirements of land for economic growth, the changing political economy with rising democratization and opposition from disenchanted and affected parties, leading also to increasing Judicial involvement on State inaction or perceived abuse of power; and all within the delicate federal balance of India's polity. It is these disparate elements that occasion the fine act of political balancing that the LARR Bill seems to have taken upon itself to undertake.

If the judiciary and the states are kept in good humour, what then are the other competing imperatives at work? The first is the claim of private enterprise, preoccupied with the state's inability to create an enabling regulatory environment for markets and property rights to function better. The other imperative, relying on an entitlement framework, is disgruntled about forced displacement and concerned about the marginalised that have historically borne the brunt of land acquisition decisions. Environmental and food security concerns also coalesce.

Caught between the two competing maelstroms, within the government and outside, the LARR Bill, in trying to cohere among competing imperatives, also finds itself sandwiched between the two. If the Standing Committee, due to deliver its report by February, stalls till the next monsoon session, the political momentum that the Congress hoped to derive in UP will dilute and the focus would instead shift to leveraging this Bill for electoral gains in the next general elections of 2014. The Supreme Court, however, in the meantime, will continue to explore questions of abuse (will the Noida Extension case be a judicial landmark?) and in legislative vacuum could even second-guess on questions of 'public purpose', thereby opening a complicated separation of powers debate, reminiscent of the 'right to property' impasse of the past.

What the LARR Bill seeks to achieve politically, in the run up to the 2014 general elections, is make the enactment, when passed, a legal basis for the enforcement of entitlements regarding due process, compensation and R&R, which would be politically articulated as achievements of the Central Government as well as resolved through the Supreme Court.

The Supreme Court, on its part, perhaps in anticipation of the LARR Bill, has already made some observations regarding the 'outdated' nature of LAA 1894 and the need for 'a fair, reasonable and rational enactment in tune with constitutional provisions, particularly Article 300A of the Constitution'.^{xli} There is also little doubt that the political trigger for the Bill has been long since coming, if the developments of Singur (or more recently in Uttar Pradesh) provide any indication.

However, the Standing Committee deliberations and procedural requirements in Parliament have already impeded whatever quick political gains the Central Government may have sought to have derived from the provisions. Legislative tradition would require the Standing Committee deliberations to be complete, a process which could delay the immediate passage of the Bill in Parliament.

In the longer run, however, the LARR Bill is an institutional attempt to bring about legal coherence. Whether its indirect, unintended consequences are the spatial re-arrangement of new, smaller, taller, highly dense, urban townships, or gated enclaves or for that matter more decentralised uniformity-is a vision that speaks as much about the adequacy (or inadequacy) of law, as much as the law's attempted power to generate larger socio-political and economic change.

Formal law is only the tip of the iceberg and the law works within the political economy of institutions, within a frame of rules, interpreted and implemented by people. That acknowledged, there are questions regarding formalization and the informal economy, customary ownership, commons, lack of titles, inadequate records and the near absence of a functional land market for sufficient price valuation without information asymmetries.

In a country where land titles are so uncertain (even assuming that the new Land Titling Bill 2011 will also be enacted), without a functional land market in most cities, where procedures for transfer of land are best with such information asymmetries, the LARR Bill raises more complex questions about the very adequacy of a single legislation to effectively play the framework for matters so fraught with political, economic and significantly (for a majority), emotional-symbolic resonance. LARR works on a compromise: create the law, lay down the framework (with numerous provisos and caveats as the case may be, for the lawyers to later dissect), so that there is more coherence and clarity, so that, the battles over land, can be fought out institutionally, within the complex politics of the country.

The question of balance nevertheless predominates and refuses to go away. Ensuring 'balance' is an organic process, a task that depends on how effectively political support is leveraged by bringing diverse stakeholders to agree to political compromises that democracy demands. The quest for legitimacy is sometimes rendered futile, made even more daunting if such political consensus is absent. This is less about the letter of the law then and more about politics, where perception will matter as much as the tinkering detail.

Notes:

ⁱ Radhey Shyam v State of Uttar Pradesh and others, decided on April 15, 2011; Bench comprising Justice GS Singhvi and Justice Ashok Kr. Ganguly; see also PK Sarkar, 'Law of Acquisition of Land in India' (2nd Edition), Eastern Law House, 2007;

ⁱⁱ See PK Sarkar as above, page 2

ⁱⁱⁱ See Radhey Shyam as above; also Land Acquisition Act, 1894

^{iv} The LAA 1894 has been amended in 1919, 1921, 1923, 1933, 1962, 1967 and 1984. See <http://www.deccanherald.com/content/202342/replace-archaic-land-acquisition-law.html>

^v Usha Ramanathan, 'A Word on Eminent domain', <http://www.ielrc.org/content/a0902.pdf>; see also, Malcolm N Shaw, 'International Law' on 'Territorial Sovereignty' pg 333-338 (Cambridge, 1997)

^{vi} See for example, RL Arora v State of Uttar Pradesh and others, decided on February 14, 1964, Justice KN Wanchoo; see also Chiranjit Lal Choudhury v the Union of India and others, decided on December 4, 1950, bench: Justice Hiralal Kania

^{vii} Constitution (Seventh Amendment) Act 1956; Entry 42 List III/Concurrent List, Constitution of India refers to 'Acquisition and requisitioning of property'; see also Entry 18 list II/State List, 'Land, that is to say, right in and

over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization'; also Entry 45 list II/State List: 'Land Revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue for revenue purposes and records of rights, and alienation of revenues'

^{viii} See Kameshwar Vs. State of Bihar, AIR 1951 Patna 91; I.C. Golak Nath & Ors. Vs. State of Punjab, (1967) 2 SCR 762; His Holiness Kesavananda Bharati, Sripadagalvaru Vs. State of Kerala & Anr., (1973) 4 SCC 225; Smt. Indira Nehru Gandhi Vs. Raj Narain, 1975 Supp. (1) SCC 1; Menaka Gandhi Vs. Union of India, (1978) 1 SCC 248; Minerva Mills Ltd. Vs. Union of India, (1980) 3 SCC 625; Waman Rao & Ors. Vs. Union of India, (1981) 2 SCC 362; Maharao Sahib Shri Bhim Singhji Vs. Union of India & Ors., (1981) 1 SCC 166; I.R. Coelho (Dead) by Lrs. Vs. State of Tamil Nadu & Ors., (1999) 7 SCC 580; see also

<http://districtcourtallahabad.up.nic.in/articles/9th%20schedule.pdf>

^{ix} See generally, Granville Austin, 'Working a Democratic Constitution: the Indian Experience' (OUP, 1999); also Constitution of India (VN Shukla, ed. Mahendra P Singh, 11th Ed. Eastern Book Company, 2008)

^x KT Plantation Pvt Limited and Another v State of Karnataka; decided on August 9, 2011 (five member Constitution Bench comprising Chief Justice S H Kapadia, Justice Mukundakam Sharma, Justice KS Radhakrishnan, Justice Swatanter Kumar and Justice Anil R Dave); see also Rajiv Sarin and another v State of Uttarakhand and others; decided on August 9, 2011; five member Constitution Bench comprising Chief Justice SH Kapadia, Justice Mukundakam Sharma, Justice KS Radhakrishnan, Justice Swatanter Kumar and Justice Anil R Dave

^{xi} 'State plans panel to study land acquisition bill', DNA, January 19, 2012; also 'State opposes land acquisition bill', DNA, January 5, 2012

^{xii} 'Singur Act Upheld', The Hindu, September 28, 2011

^{xiii} <http://www.thehindu.com/news/national/article2607298.ece>

^{xiv} See KT Plantation case as above, detailing the various arguments. For example, Seervai, 'Constitutional Law (Chapter XIV), PK Tripathi, 'Right to Property after the 44th Amendment-better protected than ever (AIR 1980 J pg 49-82) see also, VN Shukla's 'The Constitution of India' (ed. Mahendra P. Singh) as above

^{xv} KT Plantation case as above

^{xvi} KT Plantation case as above

^{xvii} 'Land Acquisition no longer a holy cow', Times of India, October 22, 2011

^{xviii} <http://www.thehindu.com/news/national/article2607298.ece>; Justice Lodha's judgement in the land acquisition proceedings of the (then) Cholan Railways Corporation, Kumbakonam

^{xix} 'Ramesh reaches out to opposition for land bill support', Hindustan Times dated October 21, 2011

^{xx} Abandoned: Development and Displacement; (Perspectives), January 2008; see also, Usha Ramanathan, 'Displacement and the Law', (31)Economic and Political Weekly, 1996 (pg. 1486); see also Report of the Independent Review (Morse Committee) on the Sardar Sarovar Project, 1992; see also Walter Fernandes, 'India's Forced Displacement Policy and Practice: Is compensation upto its functions?' in 'Can compensation prevent impoverishment? Reforming resettlement through investments and benefit sharing' (ed. Michael M. Cernea and Hari Mohan Mathus, OUP, 2008, pg 181-207) ; also Vasudha Dhagamwar, 'Post Nandigram and Goa', Seminar, February 2008

^{xxi} Devendra Kumar Tyagi and others v State of Uttar Pradesh and others, decided on August 23, 2011; Bench comprising Justice GS Singhvi and Justice HL Dattu; See also Radhey Shyam as above; RL Arora v State of Uttar Pradesh and others, decided on February 14, 1964, Justice KN Wanchoo; see also Chiranjit Lal Choudhury v the Union of India and others, 1951 (AIR) 41, decided on December 4, 1950, bench: Justice Hiralal Kania; see also Smt. Somavanti and others v the State of Punjab and others, 1963 (AIR) 151, decided on May 2, 1962; see also, Maharao Sahib Sri Bhim Singhji v Union of India and others, 1985 AIR 1650, decided on July 1, 1985, Bench: Justice YV Chandrachud

^{xxii} Kelo et al v City of New London et al, decided on June 23, 2005; see also PK Sarkar as above at pages 392, 114;

^{xxiii} See Radhey Shyam as above

^{xxiv} See for example the debates regarding Kelo v City of New London , as above

^{xxv} M.S. Royal Orchid Hotels Private Limited and another v G Jayarama Reddy and others, decided on September 29, 2011, Bench: Justice GS Singhvi and Justice Sudhanshu Jyoti Mukhopadhyaya

^{xxvi} 'Anna takes on Land Acquisition Bill next', DNA, October 9, 2011

^{xxvii} See the National Rehabilitation Policy 2006, Ministry of Rural Development, Government of India; also policies of 2003 and 1998; see also the Rehabilitation and Resettlement Bill 2007

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- ^{xxviii} See for example the Lavasa township project which has run into environmental roadblocks
- ^{xxix} 'Ramesh proposes big role for Gram Sabhas in tribal land acquisition', The Hindu, January 27, 2012
- ^{xxx} See also deliberations regarding the draft Bill at the National Advisory Council (NAC)
- ^{xxxi} Interview to CNN IBN dated September 10, 2011
- ^{xxxii} The Special Economic Zones Act, 2005 read with the Special Economic Zones Rules 2006
- ^{xxxiii} See Maharashtra for example; <http://www.regionalplan-mmrd.org/N-Modifications.pdf>; for latest FDI Policy (October 2011) see http://dipp.nic.in/English/policies/FDI_Circular_02_2011.pdf; see also earlier Press Note 3 (2002 Series) on Guidelines for FDI for development of integrated townships including housing and building material at http://siadipp.nic.in/policy/changes/press3_02.htm; but see Rajasthan Integrated Township Policy notification, 2007 at <http://www.jaipurjda.org/pdf/others/notificationForIntegratedTownship2007.pdf> (>10 ha); see also Karnataka's Integrated Township Policies at <http://www.bmrda.kar.nic.in/doc/UDD.pdf>
- ^{xxxiv} http://dipp.nic.in/English/policies/National_Manufacturing_Policy_25October2011.pdf
- ^{xxxv} The Indian Express, October 26, 2011
- ^{xxxvi} See State of Gujarat v Shri Shantilal Mangaldas and others, 1969 (AIR) 634, decided on January 13, 1969 see also KT Plantation case as above; also State of West Bengal v Bela Banerjee and others (AIR 1954 SC 170); see also Bhim Singhji case as above
- ^{xxxvii} Rajiv Sarin and another v State of Uttarakhand and others; decided on August 9, 2011; five member Constitution Bench comprising Chief Justice SH Kapadia, Justice Mukundakam Sharma, Justice KS Radhakrishnan, Justice Swatanter Kumar and Justice Anil R Dave
- ^{xxxviii} <http://indiatoday.intoday.in/story/g.-noida-land-row-allahabad-hc-order-supreme-court/1/157520.html>
- ^{xxxix} Isher Judge Ahluwalia, The Indian Express, <http://www.indianexpress.com/news/magarpatta-building-a-city-with-ruralurban-partnership/623701/1>; See also <http://www.thehindu.com/news/states/kerala/article2591939.ece>
- ^{xl} For more views on compensation, see Rajiv Kumar, 'Land Bill will act as drag on industry', Hindu Business Line dated September 17, 2011; also Abhijit Banerjee, 'The plots thicken', The Hindustan Times dated September 19, 2011; see also Sanjoy Chakravorty, 'A lot of Skepticism and some Hope'; EAS Sarma 'Sops for the Poor and a Bonus for Industry'; Swagato Sarkar, 'The Impossibility of Just Land Acquisition'; Kenneth Bo Nielsen 'Land, Law and Resistance' in Economic and Political Weekly, October 14-18, 2011
- ^{xli} <http://www.deccanherald.com/content/202342/replace-archaic-land-acquisition-law.html>